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been introduced, classifications have been revised, and railroads have been prevented from leasing for private use facilities essential to their efficient operation as common carriers. In all this there has been no disposition to be unfair either to railroad or to shipper. The Commission has held that it has right of supervision over street as well as over steam railroads. The extension of its authority in 1907 over telephone service and the production, transmission, and delivery of heat, light, water, and power comes too late to affect the decisions reported in the volume under review.

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Federal Anti-Trust Decisions. Cases decided in United States Courts arising under, involving, or growing out of the enforcement of the Anti-Trust Act of July 2, 1890, including a few somewhat similar decisions not based upon that Act. Prepared and edited by JAMES A. FINCH, by direction of the Attorney-General. 2 volumes. (Washington: Government Printing Office, 1907. Pp. xxxvi, 1210; xxxvi, 1204. $2).

The interpretation given by our federal courts to the act popularly known as the Sherman anti-trust act, has excited so much controversy among all classes of people and has given the act a character so different from that contemplated by its author that economists, as well as lawyers, will welcome the publication in separate and convenient form of all the cases arising out of efforts to enforce its provisions.

Looking at this matter from the standpoint of the economist the cases may be roughly described as falling under three heads. (1) Capitalistic combinations among manufacturers or mine operators; (2) Railway combinations; (3) Labor combinations. The applicability of the act to each of these classes has constituted the chief ground of controversy in the federal courts.

A technical legal question of fundamental importance which had to be answered before a solution could be had of the main problems involved was this: What meaning is to be given to that phrase of the act which forbids "every contract or combination in restraint of trade" among the states? It seems to have been

pretty generally agreed from the outset that in using the term "monopoly," Congress had the common-law meaning of that term in mind. The same attitude was taken by many judges in interpreting the phrase "contract in restraint of trade." As is well-known, the English and American courts have come to agree that under the common law not all contracts in restraint of trade, but only those which restrict competition unduly or in an unreasonable manner are illegal. Since the federal courts do not apply the common law, many judges argued in a very plausible manner, that Congress intended to prohibit by the anti-trust law only those contracts or combinations which would be declared by the state courts to be in violation of the common law. Other judges took a different view of the matter and held that the anti-trust law went further than the common law in this respect, and prohibited every contract or combination which restricted competition in any manner or degree. Judges of the inferior courts continued to argue this question for several years until the United States Supreme Court in the case of *U. S. v. Trans-Missouri Freight Assoc.* (166 U. S., 290), decided that the statute made illegal *all* contracts in restraint of trade, reasonable as well as unreasonable. Even in the court of last resort was the difference of opinion so marked that four of the nine judges united in a dissenting opinion.

In respect to the applicability of the anti-trust law to capitalistic combinations within the fields of manufacturing or mining the first decisions reached in the circuit courts, especially that in the case of *American Biscuit Manuf'g Co. v. Klotz et al.* (44 Fed., 721), seemed to indicate that a way had been found to prohibit such combinations. But this opinion was not shared by many judges. In 1892 in a group of cases heard in the federal circuit courts in the states of Massachusetts, New York and Ohio, in all of which cases the Whiskey Trust was directly or indirectly the defendant, the unanimous decision was reached that the consolidation under a single ownership of a number of hitherto competing plants scattered throughout several states and engaged in manufacturing was not sufficient to constitute a combination in restraint of interstate trade, even though the products of the combination incidentally entered into interstate commerce. In what was probably the most important of these cases, *In re: Greene* (52

Fed., 104) Judge (later Justice) Jackson said: "It was certainly not a 'monopoly' in the legal sense of the term, for the accused or the Distilling and Cattle Feeding Company to own 70 distilleries, and the products thereof, whether such products amounted to the whole or a large part of what was produced in the country. Although this was the judgment of an inferior court it was generally accepted as affording a true interpretation of the law and was quoted with approval by many judges, even by those of the Supreme Court. Finally in the well-known Sugar Trust case, *U. S. v. E. C. Knight* (156 U. S., 1), the Supreme Court itself decided that the creation of a monopoly in manufacture alone could not be prevented by the Act of July 2, 1890.

The decision in the Knight case was accepted by some judges to mean that a combination of manufacturing concerns could not be reached by the anti-trust law and in the case of *U. S. v. Addyston Pipe Co.* (78 Fed., 712), District Judge Clark had no hesitation in declaring that the defendants were not subject to the anti-trust act and quoted the cases of *Re: Greene* and *U. S. v. Knight* in support of his opinion. Here again a surprise was forthcoming, for Judge Taft of the Circuit Court of Appeals reversed (85 Fed., 271) the decision of the lower court and the Supreme Court sustained (175 U. S., 211) this reversal, holding that the arrangements made by the combination for the sale of its pipe were sufficiently in restraint of the freedom of interstate commerce to constitute a violation of the federal anti-trust act.

This entire question of the applicability of the anti-trust act to combinations of manufacturers has become still further complicated by the decisions of the Supreme Court in the case of *Bement v. National Harrow Company* (186 U. S., 70), where at least one form of restraint is held to be "reasonable and legal," and in the case of *Montague & Co., v. Lowry* (193 U. S., 38) where an agreement between manufacturers and dealers not to sell to or buy from persons not members of the association is held to be a contract in restraint of interstate commerce.

It is apparent that while a combination among manufacturers, even to the point of creating a monopoly may be perfectly legal as long as it confines its operations to manufacturing, it will have to proceed in a very tactful manner in arranging to buy its materials or to sell its products, if it escapes the danger of being declared a "combination in restraint of trade."

The question as to whether the anti-trust act could be successfully invoked against combinations of workingmen came up for an answer by the courts very soon after the passage of the act. In the case of *U. S. v. Workingmen's Amalgamated Council of New Orleans* (54 Fed., 994) Judge Billings said: "I think the Congressional debates show that the statute had its origin in the evils of massed capital but, when the Congress came to formulating the prohibition * * * the subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital." The logic of the situation, if this case were allowed to establish a precedent, was clearly appreciated by Judge Speer who, in the case of *Waterhouse v. Comer* (55 Fed., 149), called attention to the fact that, at least as far as interstate railways were concerned, "a strike or 'boycott' as it is popularly called, if it was ever effective can be so no longer." Mr. Justice White in his dissenting opinion in the Trans-Missouri case called attention to the same fact when he said that if the construction placed on the phrase "every contract in restraint of trade" by the majority of the court were allowed to stand, the anti-trust law would be found to embrace "within its inhibition every contract or combination by which workingmen seek to peacefully better their condition." The Supreme Court has, however, shown its willingness to accept the logical conclusion of Justice White's argument. Recently, in the now famous Danbury Hatters' case, *Loewe v. Lawlor* (28 Sup. Court Rep., 301), not reported in these volumes, a combined strike and boycott has been declared to be a violation of the anti-trust act. Chief-Justice Fuller in delivering the opinion of the Court said: "In our opinion the combination described is a combination 'in restraint of trade or commerce among the several states,' in the sense in which the words were used in the act. And that conclusion rests on many judgments of this Court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between States, or restricts in that regard the liberty of a trader to engage in business." There seems to remain still one doubtful point, viz., whether it was the strike or the boycott or both which violated the anti-trust act.

The applicability of the anti-trust law to traffic agreements made between railroads engaged in interstate commerce was put to a test in the case of *U. S. v. Trans-Missouri Freight Association.* When this case was first heard in the Circuit Court (53 Fed., 440) Judge Riner held that the Freight Association constituted no violation of the anti-trust law for two reasons: first, such restraint of trade as it imposed was reasonable, and, second, railway agreements had already been made subject to government regulation by a special act, the act of February 4, 1887, to regulate commerce, and according to a well-settled rule of law a general statute would not apply to the subject matter of a special act unless the language showed clearly that it was so intended. The Circuit Court of Appeals (58 Fed., 58) affirmed the decree of the lower court, although it declined to discuss the question as to whether the anti-trust act was applicable to railway combinations. Finally as we have already implied, the Supreme Court (166 U. S., 290) by a bare majority reversed the decree of the lower courts, holding that the anti-trust act prohibited all contracts, reasonable or unreasonable, whether made by railway companies or by other parties, provided only they, by direct effect, produced a restraint of interstate trade or commerce.

It would be folly to predict the future of the Sherman anti-trust act. In its present form, as interpreted by the courts, it probably satisfies no one. Organized labor feels that the act constitutes a serious hindrance to collective bargaining and is earnestly endeavoring to secure its amendment in such a way as to make it inapplicable to labor combinations. Railway officials complain that under the restrictions imposed by this act and the act to regulate commerce, railroads are left free neither to compete nor to combine, yet these officials feel inclined to congratulate themselves on the assistance the anti-trust act renders them in case of a railway strike. Manufacturers are just now rejoicing in the fact that the act lessens the danger of strikes or boycotts, but they feel more or less uncertain as to the legality of their own combinations. The judges in the lower courts who are called upon to interpret and apply the act seem annoyed at its uncertain language and one of them impatiently exclaims: "The courts have found it very difficult to apply the indefinite generalities of this act to the facts of any given case." (74 Fed., 802).

The act appears to have been very successful in reaching combinations for which it was not, primarily at least, intended. Meanwhile the oil, steel, copper, sugar, tobacco, whiskey and other trusts wax fat and smile complacently.

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Fifty Years in Wall Street. Being *Twenty-eight Years in Wall Street* Revised and Enlarged by a Résumé of the past twenty-two years, making a Record of Fifty Years in Wall Street. By HENRY CLEWS. (New York: Irving Publishing Company. 1908. Pp. 1063. $3).

It has long been the practice of proprietary banking houses to issue financial literature in the form of circulars, booklets, and even formidable volumes as a means of extending their clientele. Some twenty years ago Mr. Clews put out his *Twenty-eight Years in Wall Street*, which was patterned after Fowler's *Ten Years in Wall Street*, and which like its model had value not for any careful exposition of stock exchange methods or for its advice to investors, but for the side lights which it cast upon notable individuals and events in our financial history. This book has now been supplanted by an enlarged (but not revised) edition, the first 723 pages of which are from the old plates.

The new chapters are essentially different in character from the rest of the book. They consist for the most part of addresses, delivered before various business organizations, upon such subjects as needed publicity and reform in corporations; the monetary situation and its remedies, individualism versus socialism, great wealth and social unrest, the crisis of 1907 and its causes, and the national corporation problem. Here is to be found some truth, and much error, both of judgment and of fact. Most of us who believe, for example, that President Roosevelt was not mainly responsible for the panic of 1907, and that independent audits of corporation accounts are of great service to the stockholders, will prefer to look elsewhere than to Mr. Clews for the last word upon such subjects as the income tax, socialism, and government ownership of public utilities. We are sceptical,